



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152913

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 12, 2013, at Racine, Wisconsin.

NOTE: The record was held open until November 18, 2013 to give the Petitioner an opportunity to supplement the record. Petitioner submitted the custody/placement agreement for her daughter. This has been marked as Exhibit 3. Petitioner also submitted the custody/placement agreement for her three sons. This has been marked as Exhibit 7 and entered into the record.

The issue for determination is whether the Racine County Department of Human Services correctly reduced Petitioner's FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Rhonda Kramer, Economic Support Specialist-Lead
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On September 30, 2013, the agency sent Petitioner a notice indicating that as of November 1, 2013, her FoodShare benefits would be reduced from \$668.00 to \$200.00 per month, because her children did not live with her. (Exhibit 5)
3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 16, 2013. (Exhibit 1)
4. Petitioner and the father of her daughter have joint custody and share placement of the daughter. The child resides with the father during the school year and visits with Petitioner on weekends. During the summer the child resides with Petitioner. (Exhibit 3)
5. Petitioner and the father of her sons entered into a stipulation and order modifying placement and child support on October 17, 2012. (Exhibit 8)
6. Per the October 17, 2012, agreement, Petitioner has joint custody of her sons. The agreement also stated that placement would be 50/50, with the mother having the children every Monday and Tuesday, the Father having the children every Wednesday and Thursday and the parents rotating the weekends Friday through Sunday. (Exhibit 8)
7. At some point, Petitioner and the father of her sons deviated from the agreement to allow the children to attend better schools. So during the school year, the children are now with the father Monday through Friday and with Petitioner Saturday and Sunday. Petitioner also has the children on all vacation days from school and through the summer months. (Testimony of Petitioner; Exhibit 4)

DISCUSSION

Petitioner asserts that the agency miscalculated her FoodShare benefits, because it did not include her three sons on her case. It is the agency's contention that the children currently reside with their father and as such, cannot be included on Petitioner's case.

The *FoodShare Wisconsin Handbook* states the following guidelines with respect to joint or shared physical custody of children:

3.2.1.1 Joint or Shared Physical Custody of Children

Children are included in the household where they reside when they are under the care and control of a parent or other caretaker in that household. There may be situations when the residence of a child is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

...

Only one parent can receive FS for a child. If you still cannot determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of your determination. If you still cannot determine which food unit the child should be in, call the CARES call center.

Emphasis added.

Although there is a court order in place requiring 50/50 placement and custody, Petitioner and the father of her children chose to deviate from the agreement so the children could attend better schools. It is clear that during the school year, primary placement of the children is with the father, meaning they reside with their father and visit with their mother. Petitioner has a similar arrangement for her daughter. Accordingly, during the school year, the children may not be included in Petitioner's assistance group, per *FSH 3.2.1.1*

When the children go to live with Petitioner during the summer months, she can notify the agency and request an increase in her FoodShare benefits for those months.

CONCLUSIONS OF LAW

The agency correctly reduced Petitioner's FoodShare benefits effective November 1, 2013.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

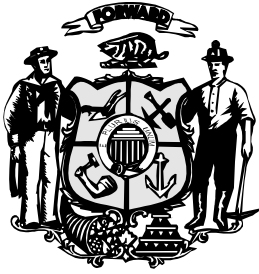
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of November, 2013.

sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 19, 2013.

Racine County Department of Human Services
Division of Health Care Access and Accountability